HON'BLE THE CHIEF JUSTICE SHRI G.S. SINGHVI
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Appeal No. 865 of 2007

Between:

M.A. Aleem

… Appellant

And

The Union of India,
Rep. by its Director,
General/Personnel Affairs,
Chief of Army Staff,
Army Head Quarters, New Delhi & others

… Respondents

:: J U D G M E N T ::

Counsel for the appellant : Shri Bhajrang Singh Thakur

Counsel for the respondents: Shri S.S. Varma,
Additional Central Government
Standing Counsel

October 12, 2007

Per C.V. NAGARJUNA REDDY, J

This appeal is directed against order dated 01.03.2007 passed by the learned Single Judge, whereby he dismissed the writ petition filed by the appellant against his discharge from the Indian Army.

The appellant joined service as Sepoy in the year 1979. He was promoted as Nayak in 1985 and as Hawaldar in 1986. Between 14.11.1991 and 28.08.1996, four red ink entries were made in the

service record of the appellant. After taking note of the same, respondent No.3 issued notice dated 28.11.1996 to the appellant to show cause as to why he may not be discharged from service. In his reply dated 13.12.1996, the appellant stated that he incurred three red ink entries due to his illness and the fourth due to “home problems”. The appellant further stated that he has recovered from the illness and overcome the domestic problems and is in a position to carry out his duties and serve the Army. He requested for giving one chance to serve the Indian Army. Thereafter, respondent No.3 issued order dated 27.01.1997, whereby he discharged the appellant from service with full pensionary benefits.

The appellant challenged the order of discharge in Writ Petition No.22230 of 1997. The learned Single Judge dismissed the same by observing that the red ink entries recorded in the service book of the appellant constituted valid basis for his discharge from service.

Shri Bhajrang Singh Thakur, learned counsel for the appellant submitted that the order of discharge passed against the appellant is in violation of the procedure prescribed “for removal of undesirable and inefficient JCO’s/WO’s/Ors”. He invited our attention to clause 5(f) Note:-2 and submitted that mere incurring of four red ink entries does not ipso facto make the member of the Force liable for discharge from service and that unless the competent authority is convinced that the discharge is absolutely necessary in the interest of service, the concerned official cannot be discharged from service. He further contended that the discharge order is required to be approved by the next higher Commander and that in the instant case no such approval has been obtained by respondent No.3. He then argued that the learned Single Judge committed serious error by dismissing the writ petition on the premise that the appellant has not suffered any

prejudice.

Shri S.S. Varma, Additional Central Government Standing Counsel supported the order under challenge and argued that the four red ink entries made in the service book of the appellant justified the exercise of power by respondent No.3. Shri Varma pointed out that the action taken by respondent No.3 was approved by the higher officer, but the said fact could not be brought to the notice of the learned Single Judge and this is the reason why he gave direction to the higher authority to consider the order of discharge and decide whether or not the same deserves to be approved.

We have given serious thought to the respective submissions and perused the record. Clause 5(f) Note:-2 which admittedly governs the appellant's case reads as under:

> " Discharge from service consequent to four red ink entries is not a mandatory or legal requirement. In such cases, Commanding Officer must consider the nature of offences for which each red ink entry had been awarded and not be harsh with the individual, especially when they are about to complete the pensionable service. Due consideration should be given to the long service, hard stations and difficult living conditions that the OR has been exposed to during his service, and the discharge should be ordered only when it is absolutely necessary in the interest of service. Such discharge should be approved by the next higher Commander."

A reading of the above reproduced clause makes it clear that mere incurring of four red ink entries does not make discharge of an employee mandatory. In order to discharge an employee, the officer must be satisfied that it is absolutely necessary to do so in the interest of service.

As could be seen from the show cause notice dated 28.11.1996, the sole ground on which the discharge of the appellant was proposed

was his incurring four red ink entries between November 1991 and August 1996. In his reply, the appellant cited ill-health and domestic problems as the reasons for his incurring red ink entries and requested that he may be given another chance to serve the Indian Army without blemish. The order of discharge does not show objective consideration of Note-2 of Clause 5(f) and the reply submitted by the appellant. It is, therefore, reasonable to take the view that respondent No.3 discharged the appellant without applying his mind to the relevant provision and the reply of the appellant.

The learned Single Judge has not gone into this aspect of the matter. Therefore, we feel that ends of justice will be met by setting aside the order under challenge and remanding the case to the Single Bench for fresh adjudication.

In the result, the appeal is allowed. The order of the learned Single Judge is set aside and the case is remanded for fresh adjudication of the writ petition.

As a sequel to disposal of the appeal, W.A.M.P.No.1731 of 2007 filed by the appellant for interim relief is disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

G.S. SINGHVI, CJ

October 12, 2007
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